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9 Attorneys for Defendant
10 *Diamond Resorts International Club, Inc.*

11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**

13 GISELLE FOURNIER and REJEAN
14 FOURNIER, individually and on
15 behalf of all others similarly situated,

16 Plaintiffs,

17 v.

18 DIAMOND RESORTS
19 INTERNATIONAL CLUB, INC. and
20 DOES 1 through 10, inclusive,

21 Defendants.

Case No. 5:17-cv-00911-RGK-KK

**RESPONSE TO ORDER TO SHOW
CAUSE AND CONFIRMATION
THAT MOTION SEEKING
DISMISSAL UNDER RULE 12(b)(6)
WAS FILED ON JULY 3, 2017, IN
LIEU OF ANSWER**

Hon. R. Gary Klausner

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1 Defendant Diamond Resorts International Club, Inc. (“Diamond”) has
 2 reviewed the OSC issued by this Court on July 20, 2017, and wishes to clarify that
 3 its Motion to Compel Arbitration and to Stay or Dismiss Action included a Motion
 4 to Dismiss pursuant to Rule 12(b)(6), given Plaintiffs’ agreement to arbitrate their
 5 disputes with Diamond.

6 The Notice of Motion and Motion (Dkt. No. 11) specified Diamond’s
 7 argument that the action should be “dismissed pursuant to Rule 12(b)(6) for failing
 8 to state a claim that can be pursued in this litigation forum, given Plaintiffs’
 9 agreement to arbitrate such disputes.” *See* Dkt. 11 at 1:20-22. The Memorandum
 10 in support (Dkt. No. 11-1) also specified that the entire action “should be dismissed
 11 pursuant to Rule 12(b)(6) for failing to state a claim that can be pursued in this
 12 litigation forum” (*see* Dkt. 11-1 at 2:11-12), and provided the court with legal
 13 authority supporting dismissal of the complaint in its entirety because of the parties’
 14 agreement to arbitrate. *Id.* at 7:11-16 (citing to *Sparling v. Hoffman Const. Co.,*
 15 *Inc.*, 864 F.2d 635, 638 (9th Cir. 1988).

16 Because Diamond thus moved this Court to dismiss Plaintiffs’ Complaint in
 17 its entirety when filing its response to the Complaint on July 3, 2017, Diamond did
 18 not also file an Answer to the Complaint (a response that Diamond believes should
 19 be made in the parties’ arbitration proceedings, once those are compelled by this
 20 Court). Diamond wished to clarify its reasons for not filing an Answer in this
 21 litigation, and to note that it did in fact file a Motion constituting a responsive
 22 pleading under the Federal Rules of Civil Procedure, Rule 12(b)(6), on July 3,
 23 2017.

1 Dated: July 26, 2017

SNELL & WILMER L.L.P.

2
3 By: /s/ Becca Wahlquist

4 Becca Wahlquist
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7 Los Angeles, California 90071

8 *Attorneys for Defendant*
9 *Diamond Resorts International*
10 *Club, Inc.*

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PROOF OF SERVICE

I, Becca Wahlquist, declare as follows:

I am employed in Los Angeles County, Los Angeles, California. I am over the age of eighteen years and not a party to this action. My business address is Snell & Wilmer L.L.P., 350 S. Grand Avenue, Suite 3100, Los Angeles, California 90071. On July 26, 2017, I served the within:

**RESPONSE TO ORDER TO SHOW CAUSE AND CONFIRMATION
THAT MOTION SEEKING DISMISSAL UNDER RULE 12(b)(6) WAS
FILED ON JULY 3, 2017, IN LIEU OF ANSWER**

on the interested parties in this action addressed as follows:

- **Amir J Goldstein**
ajg@consumercounselgroup.com, jcl@consumercounselgroup.com

☒ **(BY ELECTRONIC MAIL)** By transmitting such document(s) electronically via the Central District of California's CM/ECF system, to the persons at the electronic mail addresses listed above.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this declaration was executed on July 26, 2017, at Los Angeles, California.

/s/ Becca Wahlquist

Becca Wahlquist

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